IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16-9-2005

Coram

The Honourable Mr.Justice P.D.DINAKARAN

Civil Revision Petition(PD)No.2109 of 2004
C.M.P.No.20103 of 2004

S. Kuppusamy .. Petitioner

Vs.

1. P.K.Subramani

2. P.K.Kandasamy

3. P.K.Kumaravel

4. P.K.Loganathan .. Respondents

This Civil Revision Petition has been filed under Article 227 of Constitution of India, against the fair and decretal order dated 25.8.2004 made in I.A.No.664 of 2003 in O.S.No.206 of 1987 on the file of the District Munsif Court, Arakkonam.

For Petitioner : Mr.G.Jeremiah
For Respondents : Mr.N.Sankaravadivel

O R D E R

This revision petition has been filed against the fair and decretal order dated 25.8.2004 in I.A.No.664 of 2003 in O.S.No.206 of 1987 on the file of District Munsif, Arakkonam.

2. The respondents/plaintiffs 2 to 5 along with their mother Kuppammal filed the suit for permanent injunction against the revision petitioner/defendant. In the suit, the plaintiffs filed I.A.No.664 of 2003 to amend the plaint, which was objected to by the revision petitioner/defendant.

3. The trial Court allowed the said application placing reliance on the decision of this Court reported in (2004)2 MLJ 411 (Sarammal Vs. S.Dilshad Begum and others), wherein it is held that the amendment can be ordered if no new case is set up in the amendment. It is against this order, the present revision petition has been filed by the defendant.

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4. The main objection of the revision petitioner is that the powers conferred under Order VI Rule 17 seeking to amend the plaint cannot be resorted to annul the available right of limitation accrued on the revision petitioner/defendant in the suit. The learned counsel placed reliance on the decision of the Apex Court reported in 1995 TLNJ 77 (SC) (K.Raheja Constructions Ltd. Vs. Alliance Ministries and others), wherein it is held thus,

> "... Having allowed the period of seven years elapsed from the date of filing of the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963, any amendment on the grounds set out, would defeat the valuable right of limitation accrued to the respondent."

5. Even though the power conferred under Order VI Rule 17 of the Code of Civil Procedure can be exercised to avoid the multiplicity of proceedings, applying the ratio laid down by the Apex Court in 1995 TLNJ 77 (SC)(cited supra), such power cannot be indiscriminately exercised to extend the period of limitation prescribed under the Limitation Act.

6. In the result, the revision petition is allowed. The fair and decretal order dated 25.8.2004 made in I.A.No.664 of 2003 in O.S.No.206 of 1987 are hereby set aside. No costs. Connected CMP No.20103 of 2004 is closed.

16.9.2005

vr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The District Munsif, Arakkonam.

1 cc to Mr.N.Sankaravadivel, Advocate, SR.39058
1 cc to Mr.G.Jeremiah, Advocate, SR.38856

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